
UTAH LABOR COMMISSION

REBECCA BECKHAM,

Petitioner,

vs.

**APPLEBEES and WAUSAU
BUSINESS INSURANCE
COMPANY,**

Respondent.

ORDER OF REMAND

Case No. 07-0242

Applebees and its insurance carrier, Wausau Business Insurance Company (referred to jointly as “Applebees”), ask the Utah Labor Commission to review Administrative Law Judge Luke’s preliminary award of permanent total disability benefits to Rebecca Beckham under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-201 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Beckham claims workers’ compensation benefits from Applebees for a work-related back injury that occurred on December 7, 2003. After holding an evidentiary hearing, Judge Luke awarded benefits, concluding there was no conflict in the medical evidence necessitating appointment of a medical panel.

In its motion for review, Applebees argues that a medical panel should be appointed to resolve conflicts of medical opinion regarding Ms. Beckham’s functional abilities and physical limitations.

FINDINGS OF FACT

The Commission adopts Judge Luke’s findings of fact, as supplemented by this decision. The relevant facts are as follows:

Ms. Beckham injured her back when she lifted a 5-gallon bucket of ice at Applebees on December 7, 2003. On August 12, 2004, she slipped and fell at work, exacerbating the back injury. Ms. Beckham underwent a lumbar fusion on November 11, 2004, and May 26, 2006. She reached medical stability by July 5, 2006, and was left with a 21% whole person impairment as a result of her back injuries.

ORDER OF REMAND
REBECCA BECKHAM
PAGE 2 OF 4

At Applebee's request, Dr. Knoebel examined Ms. Beckham and observed that Ms. Beckham's subjective complaints far outweigh the objective findings, which suggested to him an amplification of symptoms. He further opined that:

. . . it is estimated that the patient can reasonably return to work with a limitation to sedentary light work. . . . This contemplates that the individual can do work in a standing or walking position with a minimal demand for physical effort. The lifting capacity is limited to 15 pounds occasionally and 10 pounds frequently and no bending, squatting, kneeling, climbing, pushing, pulling, or other activities involving comparable physical effort are recommended.

On June 13 and 14, 2007, Mr. Felix performed a functional capacity examination of Ms. Beckham and concluded that because she can lift and carry up to 12 pounds occasionally, she met the Sedentary Physical Demand Characteristic of work category. Mr. Felix also included in his observations that Ms. Beckham's exhibited signs of symptom magnification during functional testing, because her responses as to her physical abilities did not match what was observed during the evaluation and thus was "not reaching her true measure of functional abilities during the evaluation." Mr. Felix explained that, although Ms. Beckham responded she could not lift or carry anything at all, during the exam she was able to lift up to ten pounds on each day of testing and lifted and carried up to twelve pounds safely. Mr. Felix noted that during the evaluation, Ms. Beckham was able to sit for at least 30 minutes at one time. Mr. Felix concluded that Ms. Beckham's bilateral manual dexterity was competitive, she appeared to have some limitations in sitting and standing activities, and her walking was limited due to reported pain in her right thigh and lower back.

The parties stipulated to the expertise and qualifications of Mr. Hedrick as a vocational expert. In reviewing work positions that Ms. Beckham would be qualified for, Mr. Hedrick relied on Dr. Knoebel's report when he testified that taking into consideration Ms. Beckham's physical restrictions, she still qualified for 11 positions in the St. George area classified as "sedentary" and would not require lifting more than 10 pounds. Mr. Hedrick's opinion of whether Ms. Beckham would qualify for any of these identified positions changed, however, when given hypothetical examples of Ms. Beckham's physical limitations according to the limitations outlined by Dr. Root. Dr. Root's estimation of Ms. Beckham's physical limitations was outlined in a new report dated October 31, 2007, as well as in portions of his deposition that indicated Ms. Beckham's lifting capacity should not be above *5 pounds*. Based on the hypothetical examples of Ms. Beckham's physical limitation from Dr. Root, Mr. Hedrick opined that with those limitations, it was unlikely that Ms. Beckham would qualify for the positions he previously identified.

DISCUSSION AND CONCLUSION OF LAW

Applebee's contends that there were conflicting medical opinions between Drs. Root and Knoebel that requires appointment of a medical panel. Under Commission rule R602-2-2, the ALJ is required to appoint a medical panel where one or more significant medical issues are involved.

**ORDER OF REMAND
REBECCA BECKHAM
PAGE 3 OF 4**

The rule provides several circumstances that would require appointment, including when there are “[c]onflicting medical opinions related to a claim of permanent total disability.”

The Commission finds that there is conflict in the medical opinions regarding Ms. Beckham’s physical restrictions and functional abilities that would impact a determination of whether she qualified as permanently and totally disabled. This conflict is apparent in the fact that Mr. Hedrick’s indicated that there were 11 reasonably available positions that Ms. Beckham was qualified to work with the restrictions provided by Dr. Knoebel, whereas taking into consideration the limitations imposed by Dr. Root, Ms. Hedrick would not qualify for the same positions. For the foregoing reasons, the Commission remands the case to Judge Luke to appoint a medical panel to review the medical aspects as identified herein.

ORDER

The Commission remands the case to Judge Luke for appointment of a medical panel. It is so ordered.

Dated this 15th day of May, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

